

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Amendment of Part 90 of the  
Commission's Rules to Facilitate  
Future Development of SMR Systems  
in the 800 MHz Frequency Band

PR Docket No. 93-144  
RM-8117, RM-8030  
RM-8029

Implementation of Sections 3(n) and 332  
of the Communications Act -  
Regulatory Treatment of Mobile Services

GN Docket No. 93-252 ✓

Implementation of Section 309(j)  
of the Communications Act -  
Competitive Bidding  
800 MHz SMR

PP Docket No. 93-252

To: The Commission

**REQUEST FOR CLARIFICATION**

1. Industrial Communications & Electronics, Inc. ("IC&E"), by its attorneys, and in accordance with Section 1.106 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits this Request for Clarification in the above-entitled proceeding.<sup>1/</sup>

**I. IC&E's Interest in This Proceeding**

2. IC&E is a wireless communications provider in a number of different FCC-licensed services with particular expertise in SMR, cellular and mobile communications services.

<sup>1/</sup> First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, PR Docket No. 93-144, FCC 95-501, 10 FCC Rcd \_\_\_\_ (rel. Dec. 15, 1995)(¶¶ 9-142 "First R&O", ¶¶ 143-256 "Eighth R&O").

The company has been engaged in the mobile telecommunications business for over nineteen years. It was established in 1975 by individuals with substantial experience in all facets of the land mobile radio industry. The company's activities are focused primarily in the New England and South Florida areas. It currently offers a full range of two-way and SMR equipment sales, antenna site management and maintenance activities, and is engaged in the provision of communications and telecommunications services.

3. IC&E received FCC authority to develop a wide-area digital SMR network utilizing its 800 MHz frequencies to better serve its New England customers and marketplace in 1993. It has spent the last three (3) years deploying significant financial investment and engineering resources in the development of this wide-area New England system. IC&E has reviewed and considered the First R&O and Eighth R&O and wishes to emphasize for the Commission those key points which are essential to ensure the fashioning of workable rules to facilitate the future use of the 800 MHz SMR spectrum.

## **II. First Report and Order**

4. In the First Report and Order, the FCC adopted final service and competitive bidding rules for the "upper 10 MHz block" of 800 MHz Specialized Mobile Radio ("SMR") spectrum. It established technical and operational rules for new licensees in the Upper 10 MHz block with service areas defined by the U.S. Department of Commerce Bureau of Economic Analysis Economic Areas ("EAs"), and defined the rights of incumbent SMR licensees already operating or authorized to operate on these channels.

5. In addition, the First R&O imposes a requirement on all incumbent 800 MHz SMR licensees who have received extended implementation authority to demonstrate that

allowing them extended time to construct their facilities is warranted and furthers the public interest.<sup>2/</sup> The Order specifies that the required showing must be submitted within 90 days of the effective date of the Order and notes that the information to be included in the showing presently is required by Rule Section 90.629.<sup>3/</sup>

6. IC&E respectfully requests that the Commission clarify that the four prong showing specified in paragraph 111 is directed primarily to those licensees granted extended implementation authority pursuant to Rule Section 90.629 and not to those "slow-growth" "wide-area" systems granted pursuant to waiver.<sup>4/</sup> According to the Order, a licensee seeking to retain extended implementation authority must:

(a) indicate the duration of its extended implementation period (including commencement and termination date); (b) provide a copy of its implementation plan, as originally submitted and approved by the Commission, and any Commission-approved modifications thereto; (c) demonstrate its compliance with Section 90.629 of our rules if authority was granted pursuant to that provision, including confirmation that it has filed annual certifications regarding fulfillment of its implementation plan; and (d) certify that all facilities covered by the extended implementation authority proposed to be constructed as of the adoption date of this First Report and Order are fully constructed and that service to subscribers has commenced as defined in the CMRS Third Report and Order. Id.

Parties seeking authority under Rule Section 90.629 were required to submit detailed system

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<sup>2/</sup> First R&O at ¶ 111.

<sup>3/</sup> Id.

<sup>4/</sup> See, In re Request of Fleet Call, Inc., Memorandum Opinion and Order, File No. LMK-90036, 6 FCC Rcd 1533 (1991)("Fleet Call Order") recon. dismissed, 6 FCC Rcd 6989 (1991); In re Request of American Mobile Data Communications, Inc., Memorandum Opinion and Order, 4 FCC Rcd 3802 (1989); Letter from Richard Shiben, Chief, Land Mobile and Microwave Division, Federal Communications Commission, dated April 13, 1992 to George Hertz, Advanced MobileComm of New England, Inc. granting waiver and other relief for the creation of an "Advanced Mobile Radio System" ("MRNE"); and Request for Rule Waiver of Advanced Radio Communication Services of Florida, Inc., filed July 15, 1991 ("Advanced").

implementation plans, typically including benchmark dates by which defined progress was to have been made, and are obligated to submit annual reports on that progress, essentially the same information sought in paragraph 111. The Licensees granted wide-area authorizations pursuant to waiver typically did not submit detailed implementation plans, do not have FCC-approved construction benchmarks, and are not required to file annual certifications of construction.

7. There are sound public policy reasons for the FCC's different approach for wide-area versus purely extended implementation grants. Authorizations granted pursuant to Rule Section 90.629 were issued to parties with no existing operational facilities on the basis that their proposed system was sufficiently large, complex or technically advanced to require longer than the normally authorized construction period. The commitments made by such entities were necessarily prospective and, in that respect, speculative.

8. In contrast, wide-area systems granted pursuant to waiver, like IC&E's, were predicated on underlying constructed analog facilities.<sup>5/</sup> Wide-area systems were limited to the geographic area defined by the contiguous and overlapping service areas of those owned or managed stations that were already constructed and operational.<sup>6/</sup> In granting these wide-area authorizations, the FCC decided that, having justified exclusive use of the frequencies within the

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<sup>5/</sup> The Commission's rules governing construction of SMR stations are intended to ensure that spectrum is placed in operation and used to satisfy customer needs on a timely basis. Because all of the frequencies associated with all of the underlying analog systems owned or managed were already placed in operation and are serving customers, wide-area licensees presumably have satisfied that objective.

<sup>6/</sup> Thus, IC&E's wide-area system is fully consistent with the Weisman letter. Letter from Ralph A. Haller, Chief, Private Radio Bureau, FCC to David E. Weisman, Attorney, Meyer, Faller, Weisman and Rosenberg (FCC No. 7310-13/1700A)(Dec. 23, 1992).

market boundaries, the public interest would be served if the same entity were permitted to derive further efficiencies from the spectrum through the implementation of advanced technologies and judicious frequency reuse. The extended construction period, thus applied to the reconfiguration of an already fully constructed SMR network, not initial systems construction as was the case for extended implementation grants. It was assumed that licensees would make prudent business decisions regarding the appropriate timing of system configuration based on factors such as availability of advanced technology equipment, resolution of complex regulatory issues, and customer transition logistics among others.


9. Accordingly, specific construction benchmarks were not required. Active, successful, incumbent wide-area licensees like IC&E proceeded with system financing, equipment evaluation and the myriad other steps that necessarily precede a wide scale system reconfiguration based on the entire extended implementation period approved by the Commission.

### III. CONCLUSION

WHEREFORE, IC&E, for the reasons stated herein, respectfully requests that the Commission clarify that the four prong showing specified in paragraph 111 of the First R&O is directed primarily to those licensees granted extended implementation authority pursuant to Rule Section 90.629 and not to those "slow-growth" "wide-area" systems granted pursuant to waiver.

Respectfully submitted,

**INDUSTRIAL COMMUNICATIONS  
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Dated: March 18, 1996

## **CERTIFICATE OF SERVICE**

I, Jacqueline Lynch a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 18th day of March, 1996, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Reply Comments to the following:

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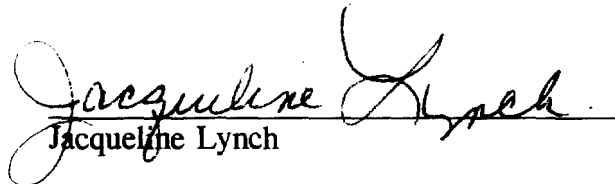
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